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C O N F I D E N T I A L SECTION 01 OF 03 BRATISLAVA 000289

SIPDIS

STATE FOR EUR/CE, INL/C, DRL

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SUBJECT: CHIEF JUSTICE HARABIN'S TERM: "1825 DAYS OF DARKNESS"?

REF: BRATISLAVA 282

CLASSIFIED BY: Keith A. Eddins, CDA, State.

REASON: 1.4 (b), (d)

¶1. (C) Introduction and Summary: In a matter of weeks, significant negative developments have taken place in the Slovak judiciary. It will take some time to assess fully the ramifications of the June 22 election of Stefan Harabin as Chief Justice and the June 18 vote by the Slovak Parliament to establish a new "specialized" court against corruption and organized crime. While the latter development was a positive step in response to the Slovak Constitutional Court's earlier ruling that the Special Court against corruption is unconstitutional, Harabin's election constitutes a severe blow to rule of law in Slovakia. End Introduction and Summary.

Specialized Court: Looking Ahead

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¶2. (U) The new "Specialized" court, which will come into effect when the Constitutional Court publishes its May 20 decision on the Special Court (there is no deadline for this), retains most of the competencies as the Special Court. It will also deal with additional types of cases, including premeditated homicides, public procurement fraud, and "extraordinary" cases of misusing power. An important and potentially negative change in competency is that the new court will lose jurisdiction over "high state officials."

¶3. (U) Many legal experts and supporters of the Special Court have expressed appreciation for the new law's provisions to retain the court's current personnel and to maintain protection for the sitting judges. However, experts also suggest that personnel continuity may be difficult to sustain for a number of reasons.

¶4. (C) We learned on June 24, for example, that the legislation doesn't permit the current Chief of the Special Court, Judge Michal Truban, to continue serving in this capacity once the transition occurs. Thus, the future head of the Specialized Court will be nominated by Harabin and the Judicial Council. Constitutional lawyers have also flagged a potential basis for a wholesale change of court personnel: According to the Slovak Constitution, judges must be nominated by the Judicial Council. In this case, the composition of the specialized court was determined by legislation. Another avenue for the dismissal of current judges might be found in the recently-stated opinion of

the Judicial Council, which asserts that since the Constitutional Court has declared security clearances for judges to be unconstitutional, it is not possible for the current judges (who hold clearances) to serve on the new Specialized Court.

¶15. (C) The Judicial Council's highly negative statement regarding the new Specialized Court, while merely advisory, is viewed with concern by advocates of an effective anti-corruption court. The Judicial Council, which voted overwhelmingly on June 22 to elect former Justice Minister Harabin as Chief Justice, is widely seen as his mouthpiece. The Judicial Council's assertions that the new court does not reflect the Constitutional Court's verdict on the Special Court can be expected to form the crux of what are expected to be a raft of petitions by persons convicted by the new court. Similarly, the Constitutional Court's ruling will open the way for hundreds of appeals by those previously convicted by the Special Court.

¶16. (C) Finally, we have been struck by Harabin's own stance toward the Specialized Court. Although he has been the Special Court's most vociferous opponent, he made two statements expressing his general support for the new Specialized Court. It is easier to understand his acquiescence when one takes into account the fact that not only will Harabin appoint the head of the Specialized Court, but that the Supreme Court, which he now leads, is the court of appeal for the Special Court and will be for the Specialized Court, as well.

Harabin: Still Reaching

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¶17. (C) Developments regarding the Special/Specialized Courts must be viewed in the broader context of Slovak justice, and, in particular, Harabin's move to the Supreme Court. Only a day after his lopsided victory (ref a), a Supreme Court Judge who supported the candidacy of Harabin's opponent received an insinuating and threatening letter. The substance and specificity of it, which were described to us by the judge, suggest that its author comes from within judicial circles. It implied that because the judge had expressed publicly her opposition to Harabin, she should expect similar attacks and public scrutiny of her performance. Given Harabin's documented record of suspending judges and subjecting them to lengthy and spurious disciplinary proceedings, there is a broad expectation that any of those who had the courage to speak out against him will be punished by one means or another.

¶18. (C) Flush from his victory, the newly-minted Chief Justice presented for the government's consideration during its June 26 session several proposals on the judiciary. These include:

--Strengthening the powers of the Judicial Council (which Harabin leads);

--Increasing the number of judges by 200 (these are named by the Judicial Council);

--Increasing judges' salaries (thereby increasing their appreciation for Harabin);

--Introducing a Constitutional amendment requiring any changes in the judicial system to be approved by a super-majority of MPs (thus further undermining checks and balances);

--Introduce new control mechanisms, which would enable the recall of judges for "serious or repeated insufficient fulfilling of duties," without going through the disciplinary senate process (another, faster avenue for Harabin to remove judges); and

--Constructing a new Supreme Court building (estimated to cost 30 million euro).

¶9. (C) As previously reported, legislation is also pending to transfer additional, important powers to the Chairman of the Supreme Court. Judges and constitutional lawyers who in principle support the idea of an independent judiciary have raised red flags about the draft legislation's effect on the balance of power among the branches of government and the concentration of so much power in the hands of one individual. Constitutional expert Radoslav Prochadzka told us that, according to the current wording of the draft, the Judicial Council has no choice but to approve the decisions of the Chairman regarding the appointment of regional court presidents.

¶10. (U) During his first in-depth television interview following election, Chief Justice Harabin attacked Zuzana Wienk, the director of the NGO "Alliance Fair-Play," which had organized the largest "Stop Harabin" initiative. He called her a fraud and claimed falsely that she had admitted that she has a database of non-existent persons that she utilizes in her email campaigns. He also recommended that the Prosecutor monitor the group's activities. Wienk told us that she had begun to receive obscene phone calls criticizing her for her protest against Harabin. He then stated that the prosecutor's office should also look into the activities of his predecessor at the Court, Milan Karabin, because under his leadership, "invoices totaling 17 million crowns went missing." Finally, he said he could only laugh at the activists (or sapheads, as he called them) who had gathered in protest against his candidacy. On June 26,

Embassy Comment:

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¶11. (C) In the wake of Harabin's election, the mood among our judicial and NGO contacts is bleak. While almost no one expected any other outcome, the courage of judges and citizens who spoke out against his election inspired many to believe that Harabin's elevation might be blocked. Reality is now setting in (one editorial on the topic was entitled 1825 Days of Darkness, in reference to the length of Harabin's tenure). That not even one of the country's most influential judges cast a vote against Harabin confirms the depth of his power and influence. In almost every conversation about Harabin's landslide election, our interlocutors comment that "now the revenge will begin."

EDDINS